

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 8226 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

Sd/-

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
? **1 to 5 NO**

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MERUBHAI RAMABHAI VAGHELA - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR VIJAY J SHAH for Applicant(s) : 1,
MR DIPEN DESAI ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
MR VM PANCHOLI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 10/09/2007

ORAL JUDGMENT :

1. Invoking the provisions of sections 439
(2) and 482 of the Code of Criminal Procedure,
1973, the petitioner, original complainant, has

challenged the judgment and order dated 9.7.2007 of learned Additional Sessions Judge, Fast Track Court No.5, Ahmedabad (Rural) in Criminal Misc. Application No.696 of 2007 whereby respondent No.2 was ordered to be released on bail.

2. It was submitted, and fairly conceded by learned A.P.P. as also learned counsel Mr.V.M.Pancholi, appearing for respondent No.2, that the impugned order did not contain or indicate requisite reasons for grant of bail even as a *prima facie* conclusion was recorded to the effect that the applicant therein was involved in the alleged offences. It is not clear from the impugned order as to which police papers, statements of witnesses taken during investigation and the arguments required the court to grant bail without entering into merits of the case.

3. Recent judgments of the Supreme Court in ***Chaman Lal v. State of U.P. [(2004) 7 SCC 525]***, ***Anwari Begum v. Sher Mohammad & Another [(2005) 7 SCC 326]*** and ***Ajay Kumar Sharma v. State of U.P. & Ors. [(2005) 7 SCC 507]*** clearly require the court to indicate in the order reasons for *prima facie* concluding why bail was being granted, particularly where an accused was charged of

having committed a serious offence. Any order devoid of such reasons suffers from non-application of mind. Though a detailed examination of evidence and elaborate documentation of the merits of the case is to be avoided by the court while passing orders on bail applications, yet a court dealing with the bail application should be satisfied as to whether there is a *prima facie* case. The court is also required to exercise its discretion in a judicious manner and not as a matter of course.

4. Therefore, the impugned order is required to be set aside only on the ground of being non-speaking and for not revealing proper application of mind to the relevant circumstances.

5. In the above facts and circumstances, learned counsel requested to remand the matter to the court concerned for re-hearing and decision in accordance with law, after affording to the parties a reasonable opportunity of being heard. It was submitted that respondent No.2 shall submit to the jurisdiction of that court by remaining personally present at the time of hearing and abide by the order that may be made after hearing of his bail application afresh. It was also submitted that the petitioner herein

shall also appear and avail the opportunity of being heard. Accordingly, petition is partly allowed with the direction to the learned Sessions Judge, Fast Track Court No.5, Ahmedabad (Rural) to hear Criminal Misc. Application No.696 of 2007 and dispose it after affording to the parties an opportunity of being heard on 18.9.2007 or such subsequent date as that court may fix for hearing. Respondent No.2 herein shall not be required, in the meantime, to surrender to judicial custody and his personal presence in the court shall be sufficient for fresh hearing of his bail application. It is needless to clarify that this court has not been apprised of the material which was available to the court concerned and the impugned order is set aside only on the aforesaid grounds without entering into the merits of the case. Therefore, learned Sessions Judge shall not be influenced by the fact either that the impugned order is set aside or that respondent No.2 is not remanded to judicial custody or that the bail granted to respondent No.2 is not cancelled forthwith. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)